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LANSING

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Analysis of Enrolled House Bill 5323

Topic: Definition of Willful and Unfair Conduct
Sponsor: Representative Huizenga
Co-Sponsors: Representative Tobocman
Committee: House Commerce
Senate Economic Development, Small Business & Regulatory Reform
Date Introduced: October 18, 2005
Date Enrolled: March 2, 2006
Date of Analysis: Revised March 3, 2006

Position: The Department of Labor & Economic Growth supports the bill.

Problem/Background:

This bill is in response to the case *Franchino v. Franchino*, by the Michigan Court of Appeals decided in 2004. The court concluded that there is not a private cause of action when a shareholder's employment by the corporation is terminated under willfully unfair and oppressive conduct by the majority shareholder, when it does not affect his interest as a shareholder.

Description of Bill:

The bill is intended to give the shareholder a cause of action against the corporation when his employment by the corporation is terminated by willfully unfair and oppressive conduct on behalf of the corporation.

Arguments For:

The Court of Appeals in *Franchino* applied the provision narrowly and ruled that it did not permit termination of employment to be considered as shareholder oppression. The amendment is intended to authorize consideration of employment actions if the actions disproportionately affect shareholder interests, such as through denial of shareholder distributions or a termination of employment to coerce shareholder action.

It expands the rights of the shareholder, as a shareholder. It is trying to protect the minority shareholder from the majority shareholder, where he is an employee of the corporation, from being terminated by the willfully unfair and oppressive conduct of the majority shareholder.

Arguments Against:

This bill does not actually do what it is meant to do. It was meant to solve the situation that was presented in the *Franchino* case where a minority shareholder, who was an employee of the corporation, is terminated. They are trying to provide the shareholder with a cause of action, but the court determined that there was no cause because his interest was not affected "*as a shareholder*." This bill only provides him a cause of action if the willfully unfair and oppressive

conduct affects his interest as a shareholder. If it does not affect his interest “*as a shareholder*” there will be no cause of action.

Supporters:

Business Law Section of the State Bar of Michigan

Opponents:

The only opposition to any of the bills in this package was to House Bill 5322. The Department of Labor & Economic Growth opposed House Bill 5322, because the problem that the bill was designed to solve had already been addressed in the expedited fee bills.

Other Pertinent Information:

This bill is part of a package of bills (House Bills 5315-23) developed by the Business Law Section of the State Bar of Michigan as part of a regular review of Michigan’s corporation laws. These reviews occur roughly at four-year intervals.

Administrative Rules Impact:

There is no administrative rules impact.

Fiscal Impact:

There is no fiscal impact.